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PATENT

Serial No. 09/821,060

Amendment in Reply to Office Action mailed on June 5, 2006

REMARKS

This Amendment is being filed in response to the Office Action dated June 5, 2006, which has been reviewed and carefully considered.

Claims 1-7 and 9-20 are pending in this application, with claims 1, 7 and 11-12 being the only independent claims.

Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

In the Office Action, Claim 18 is rejected under 35 U.S.C. §112, first paragraph for allegedly failing to comply with the written description requirement. Although the Applicant does not agree with this position, claim 18 is amended herein to clarify the claim. It is respectfully submitted that Claim 18 complies with the written description requirement and an indication to that effect is respectfully requested.

In the Office Action, claims 1-7 and 9-20 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent Application Publication No. 2002/0129368 (Schlack) in view of U.S. Patent No. 6,271,863 (Bose). It is respectfully submitted that

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claims 1-7 and 9-20 are patentable over Schlack in view of Bose for at least the following reasons.

Schlack is directed to profiling a television viewer by monitoring the viewer's interaction with a television cable box and the viewer's television viewing history. Based thereon, a viewer profile is generated (see, abstract). Schlack tracks viewing habits based on intervals such as time of day, day of week, etc. (See, paragraph [0185], lines 1-5.) Schlack provides this viewer profile, such as shown in FIG. 21A and 21B, however, to a third party other than the viewer to be used to deliver targeted advertising (see, paragraph [0069], lines 12-15). The viewer profile in FIG. 21A shows networks watched during parts of a weekday. FIG. 221B shows total time of channels watched. Schlack also mentions the viewer profile may include information such as categories, and genres of shows watched (see, paragraph [0168], lines 5-6).

Bose is directed to an interactive method for displaying results of a computation, in response to changing variables such as cash flow 105 and interest rate 107, resulting in a change in the value of a related variable, such as a bank account 103, as shown

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in FIG 1. The cash flow 105 may be changed by moving arrows located at a particular position along an axis indicating the accounting period. The interest rate 107 is changed by moving an interest slider 108. Bose has nothing to do with a user profile. The changes suggested also have nothing to do with a user profile or actual viewing history, or even an actual history for that matter. The change in an interest rate, for example, changes projections that are reflected in a change in the other dependent variables, namely the bank account.

It is respectfully submitted that the interface of Claim 1 is not anticipated or made obvious by the teachings of Schlack in view of Bose. For example, Schlack in view of Bose does not disclose or suggest, an interface that amongst other patentable elements, comprises (illustrative emphasis provided) "a television viewer profile represented by weighted viewer preferences that proportionately change with respect to at least one axis of the multiplicity of axes, wherein the at least one of the multiplicity of axes has an altering mechanism allowing a value associated with a position on the at least one axis to be changed along the at least one axis, wherein at least one of the multiplicity of axes

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represents at least one of an environmental condition, a viewer task other than television viewing, and a mood of the viewer, and the television viewer profile weighted viewer preferences have an activation mechanism that allows for viewer selection and manipulation of the television viewer profile weighted viewer preferences" as required by Claim 1, and as substantially required by each of Claims 7, 11-12.

These features are nowhere taught or suggested in Schlack, Bose, and combinations thereof. In addition, Schlack is not even directed to providing the profile to the user. Even if some combination with Bose were conceived without a hindsight benefit provided by the present system, this still would at best lead to manipulation of the viewer profile by a party other than the viewer. The Office Action suggests that this combination is obvious since it provides "for the benefit of enhanced user control of preference data." (See, Office Action, page 6, first paragraph.) However, Schlack is directed to capturing acting viewing habits that are then provided to a third party (someone other than the viewer) to facilitate targeted advertising. It is only in this environment (in front of the third party) that the profile is

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provided at all! It is not clear how providing an ability for a third party to alter those viewing habits provides any benefit. In fact, having a third party change the viewing habit information of Schlack would render the system of Schlack non-operational because the profile no longer would reflect the user's actual viewing habits. "If when combined, the references 'would produce a seemingly inoperative device,' then they teach away from their combination." (In re Sponnoble, 405 F.2d 578, 587, 160 USPQ 237, 244 (CCPA 1969)). Further, there is no suggestion to modify a prior art reference where the modification would render the device inoperable for its intended purpose. (In re Gordon, 733 F.2d 900 (Fed. Cir. 1984)).

Accordingly, it is respectfully submitted that independent claims 1, 7 and 11-12 are allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2-6, 8-10 and 13-20 should also be allowed based at least on their dependence from independent claims 1, 7 and 11-12.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of

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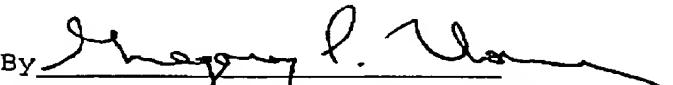
argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

It is believed that no additional fees or charges are currently due for entrance of the accompanying amendment other than those paid by the attached credit card authorization for filing of the Request for Continued Examination (RCE). However, in the event that any additional fees or charges are required for entrance of the accompanying amendment, they may be charged to Applicant's representatives Deposit Account No. 50-3649. In addition, please credit any overpayments related to any fees paid in connection with the accompanying amendment to Deposit Account No. 50-3649.

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In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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